

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.187 OF 1987

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

PRAHLADBHAI AMICHAND PATEL
VERSUS
STATE OF GUJARAT & ANR.

Appearance:

None present for petitioner
MR MUKESH PATEL for respondent No.1
MR MK VAKHARIA for respondent No.2

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision:18/11/1999

C.A.V. JUDGMENT

#. The petitioner, a retired headmaster, primary school, village Bokarwada, by this writ petition under Article 226 of the Constitution of India, is praying for directions to the respondents for earliest payment of pension dues and all other legal benefits as available and payable to the petitioner on his retirement.

#. The petitioner was involved in a criminal case for the offence under Section 409 of the Indian Penal Code. In that case, he was acquitted by judicial magistrate concerned on 8.4.95. The State of Gujarat filed appeal against that judgment in this court which came to be dismissed on 12.8.85. Even after dismissal of appeal, the petitioner was not given pension and other retiral benefits though he attained the age of superannuation on 28.2.82. After making representation and sending notices to the respondents when nothing has been done, he has come up before this court by filing this special civil application. This has been admitted after notice to the respondents on 1.10.88. Reply to the special civil application has been filed by respondent No.2 and justification has been given for withholding of retiral benefits of petitioner on the ground that as per the judgment of the learned trial court, the petitioner has not given the key, muster roll and cash amount to the administrator of the primary school concerned. On 13th October 1999, this matter has come up for hearing and on that date, the learned counsel who put appearance for the petitioner made a statement that the aforesaid three items were Muddamal in the criminal case and after decision of the case, same could have been taken by the respondents. It has further been stated that these three items have already been received by respondent No.2. The matter has been adjourned to 21st October 1999 and thereafter it has come on Board today. The learned counsel for the petitioner was not present. Mr.Vakharia, learned counsel for respondent No.2 states that immediately after judgment of the trial court the Muddamals were received by respondent. Even appeal has been decided on 12th August 1985.

#. It is really shocking that on 14th March 1988, reply has been filed in which this plea has been taken. When these three items were Muddamal in that criminal case, how far it is justified by respondent No.2 to insist from the petitioner for delivery of the same to the school. The school could have taken these things from the criminal court but instead of doing all these things, it has thought it proper may be under some ill-advice to withhold all the retiral benefits of the petitioner. The State of Gujarat is also party here and it should have

taken care to see that these three items which was Muddamal in the criminal case would have been received by respondent No.2.

#. On 1.10.88, this court has ordered that the respondent No.2 to issue no due certificate to the petitioner. The learned counsel for the petitioner is also not present and neither of the parties has made a statement whether after passing of this order, the pension and other retirementary benefits were given to the petitioner or not. Be that as it may, I do not find any justification in the action of the respondent No.2 to withhold the retirementary benefits of the petitioner if the same have already been not released. As a result of this discussion, this writ petition succeeds and the same is allowed and the respondents are directed to give to the petitioner, the pension and all other retiral benefits if the same have not been already given to him. The petitioner shall be entitled for interest on the amount of arrears of pension and other retiral benefits at the rate of 12% per annum from the date of retirement till the date of payment thereof. Necessary orders for sanction of pension, if it is not ordered so far, and the calculation of the arrears of pension and other amount of retiral benefits, are to be made within a period of two months from the date of receipt of writ of this order and actual benefits be paid, if not paid already, within a period of one month next. So far as interest is concerned, calculation thereof on payment of amount has to be made within time stipulated above. Compliance of this order has to be reported to this court also. Rule is made absolute in aforesaid terms with no order as to costs.

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[sunil]